



POLICE DEPARTMENT

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In the Matter of the Disciplinary Proceedings	:	
- against -	:	FINAL
Police Officer Brian Quire	:	ORDER
Tax Registry No. 940601	:	OF
Military and Extended Leave Desk	:	DISMISSAL

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Police Officer Brian Quire, Tax Registry No. 940601, Shield No. 18999, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2016-15832, as set forth on form P.D. 468-121, dated May 19, 2016, and after a review of the entire record, Respondent is found Guilty.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Brian Quire from the Police Service of the City of New York.


JAMES P. O'NEILL
POLICE COMMISSIONER

EFFECTIVE:



POLICE DEPARTMENT

January 24, 2018

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2016-15832
Police Officer Brian Quire	:	
Tax Registry No. 940601	:	
Military and Extended Leave Desk	:	

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At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable David S. Weisel
Assistant Deputy Commissioner Trials

APPEARANCE:

For the Department: Daniel Maurer, Esq.
Department Advocate's Office
One Police Plaza, 4th Floor
New York, NY 10038

For the Respondent: Yetta Kurland, Esq.
The Kurland Group
160 Broadway – East Building
11th Floor
New York, NY 10038

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

Charges and Specifications:

1. Detective¹ Brian Quire, while assigned to the Warrant Section, on or about and between October 28, 2015 and April 28, 2016, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Detective Quire wrongfully ingested Amphetamines without police necessity or authority to do so.
P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS
2. Detective Brian Quire, while assigned to the Warrant Section, on or about and between October 28, 2015 and April 28, 2016, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Detective Quire wrongfully possessed Amphetamines without police necessity or authority to do so.
P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on April 3 and 4, May 1, 8, and 15, and September 25, 2017. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Police Officer Janet Rosado, Police Surgeon Dr. Joseph Ciuffo, and Dr. Thomas Cairns as witnesses. Respondent called Nurse Practitioner Eddie Meraz, Sergeant Damion Brown, Detective Daniel Silverio, Detective Brian Downey, and Dr. David Kidwell as witnesses, and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, the Court finds Respondent Guilty of the charged misconduct.

¹ Respondent was demoted from detective to police officer on July 6, 2016.

FINDINGS AND ANALYSIS

Introduction

On April 28, 2016, Respondent was randomly screened for drugs by the Department. Police Officer Janet Rosado of the Medical Division collected three hair samples from Respondent's leg, two of which were sent to Psychomedics Corporation for testing. Respondent's third hair sample was stored at the Medical Division so that, in the event Respondent's first two hair samples tested positive, he could send the third sample to a laboratory of his choosing for independent testing. On May 6, 2016, Psychomedics notified the Department that Respondent's first two hair samples tested positive for methamphetamine. Respondent elected to send his third hair sample to Quest Diagnostics. This also tested positive for methamphetamine (Tr. 16, 22-24; Dept. Ex. 5a-b, Psychomedics results; Ex. 9, Quest data package).

On May 10, 2016, Respondent was interviewed by Police Surgeon Dr. Joseph Ciuffo, the Department's Medical Review Officer, regarding the positive results. During the interview, Respondent produced the medications and supplements he was currently taking, but did not provide any possible reasons for why he tested positive for methamphetamine. Ciuffo reviewed the medications and supplements Respondent named and determined that none could have caused Respondent to test positive for either amphetamine or methamphetamine. Following the interview of Respondent, Ciuffo spoke to Dr. Michael Schaffer, the laboratory director of Psychomedics, during which he requested that Schaffer review the test data (Tr. 106-08; Ex. 6, Medical Division documentation and review package ["MRO packet"]).

On March 24, 2017, Ciuffo requested that Psychomedics perform an additional test on Respondent's samples to distinguish between the *d*- and *l*- isomers of methamphetamine. The *d*-

and *l*- isomers are mirror images of each other. *d*- and *l*- refer to dextrorotatory and levorotatory. This slight difference in how the isomers rotate light has immense forensic significance. While *l*-methamphetamine can be found in over-the-counter decongestants, *d*-methamphetamine often is used illicitly. The results of the Psychomedics *d*-/*l*- isomer analysis indicated that the methamphetamine contained in Respondent's hair samples was 100% *d*-methamphetamine (Tr. 111, 114, 324).

At issue in this case is whether or not the scientific evidence proved, by a preponderance of the evidence, that Respondent wrongfully possessed and ingested methamphetamine. Respondent asserted that he could have been exposed to the drug passively as a result of police work and not intentionally. He also contended that his use of decongestant medicines could have led to the positive result. Finally, Respondent asserted that the procedures in place at the laboratories used in his tests were not reliable.

The Testing Process

Respondent's testing samples were collected at the Medical Division's Drug Screening Unit by **POLICE OFFICER JANET ROSADO**, who had received training in the collection of hair samples. Rosado confirmed Respondent's identity before directing him to complete the Medical Division's drug screening questionnaire, on which he was required to list any medications taken within the past three months. Respondent reported that he had taken two medications. He was then assigned a unique drug screen number and completed the accompanying custody and control forms for his hair samples (Tr. 11, 13, 16-19; Ex. 1, Psychomedics training materials; Ex. 2, Medical Division questionnaire; Exs. 4a-c, custody and control forms).

Rosado testified that she adhered to standard procedures when she collected Respondent's hair samples. She sprayed the table in the exam room with alcohol and wiped it

down before covering it with white paper. At less than one inch long, the hair on Respondent's head was too short to use, so Respondent elected to have the sample taken from his leg.

Respondent lifted his leg onto the table and Rosado sprayed it with alcohol. With gloved hands, Rosado shaved Respondent's leg with a new razor and divided the hair into three piles. She then distributed the hair samples into the three separate foil envelopes, which were then sealed and initialed by both Rosado and Respondent. Rosado acknowledged the Psychomedics requirement that 50 mg of hair be collected if the sample was not taken from the head. She admitted that she estimated the amount of hair by looking at it and did not weigh it (Tr. 21-22, 25, 27, 29-30, 52-53; Exs. 3a-b, custody and control forms).

Two of the samples then were sealed in a larger plastic envelope and secured in a locked cabinet at the Medical Division along with the corresponding custody and control forms to be sent to Psychomedics for testing. Respondent's third sample remained secured in the designated third-sample safe at the Medical Division (Tr. 29, 33, 84).

Psychomedics Results

DR. THOMAS CAIRNS is the senior scientific advisor at Psychomedics responsible for reviewing all data packages produced by the laboratory. Psychomedics is licensed by the New York State Department of Health in forensic toxicology to conduct hair testing for drugs of abuse. Psychomedics is licensed in multiple other states to perform the same function and is accredited by the College of American Pathologists. Cairns was deemed an expert in the field of forensic toxicology and workplace hair testing (Tr. 298-99, 304; Ex. 11, Psychomedics certificates of accreditation; Ex. 12, Cairns curriculum vitae).

Cairns explained that when methamphetamine is ingested into the body, it is absorbed into the bloodstream. As methamphetamine-contaminated blood passes through the liver, it is

metabolized so that it can be dispensed through the kidneys to the bladder and expelled from the body. As methamphetamine and its metabolites are carried by the bloodstream, they get trapped in each hair follicle. Thus, "the hair becomes a tape recorder in time of each and every ingestion by trapping the drug." Hair samples collected from the leg provide a look-back period of drug use of approximately six to seven months (Tr. 312-13, 339).

The first test conducted by Psychemedics on a hair sample is enzyme immunoassay (EIA). If this screening analysis indicates the presence of methamphetamine at or above the administrative cutoff of 5 nanograms per 10 milligrams of hair, the sample is considered a presumptive positive. The established cutoff was supported by clinical analysis and cleared by the Food and Drug Administration to distinguish between a user, or someone who has ingested on multiple occasions, and someone who had experienced passive exposure. A presumptive positive during immunoassay indicates that there is a high probability that the drug is present, but "molecular fingerprinting" by mass spectrometry is needed for a definitive answer. Thus, another portion of the same sample then is "aggressively" washed to remove external contamination and analyzed using liquid chromatography-mass spectrometry/mass spectrometry (LC-MS/MS). If mass spectrometry reveals the presence of methamphetamine at or above the cutoff, Psychemedics tests the second hair sample for confirmation (Tr. 306-07, 309-10, 314, 321).

Cairns testified that Psychemedics ensures the quality and integrity of the samples as they move from person to person in the laboratory by maintaining the chain of custody for each sample. Each person who touches or performs part of the analytical procedure indicates what they did to the sample and by whom each step was performed (Tr. 327-28).

At trial, Cairns reviewed the laboratory data package produced by Psychemedics for Respondent's samples. The package showed that the chain of custody remained intact. Respondent's first hair sample tested positive for methamphetamine at a level of 27.9 ng/10 mg. His second sample tested positive for methamphetamine at 15.1 ng/10 mg. Cairns attributed the difference between the two samples to the variation in the length of hairs collected and sampled. Respondent's first sample contained hairs of up to 2.8 cm, while his second sample contained hairs of up to 2.5 cm. Because leg hair samples were different lengths representing different look-back periods, the deviation in sample lengths here was both expected and normal. Because both samples tested positive at a level above the cutoff of 5 ng/10 mg, they indicated ingestion of methamphetamine on multiple occasions during the six- to seven-month look-back period. Based on the levels at which Respondent's samples tested positive above the 5 ng/10 mg cutoff, Cairns testified that the results represent "sort of regular weekend use" (Tr. 316-19, 321, 328-29, 332-33; Ex. 8, Psychemedics data package).

Cairns also reviewed the *d*-/*l*- isomer analysis conducted by Psychemedics in March 2017 for *d*-methamphetamine identification, in which Psychemedics used hair from Respondent's first sample. The sample contained hairs up to 3.3 cm in length. Cairns explained that it is normal to have differing sample lengths, even within the sample, because during testing Psychemedics takes a portion of the sample and determines the length of the longest hair in that subset of the population (Tr. 319-21; Respt. Ex. C, data package for isomer analysis).

The *d*-/*l*- isomer test concluded that the methamphetamine found in Respondent's samples was 100% *d*-methamphetamine. However, Cairns testified the *d*-/*l*- test was not necessary to confirm that Respondent's sample contained *d*-methamphetamine, as he "was absolutely 100 percent convinced" it was all *d*-methamphetamine prior to the test. According to Cairns, the results indicated the methamphetamine in Respondent's samples was "good quality

methamphetamine" that was either "pharmaceutical grade" or "purified clandestine" (Tr. 333-34).

Quest Diagnostics Results

Cairns also reviewed and interpreted the data contained in the laboratory data package produced by Quest Diagnostics. Cairns stated that the analysis of the third sample was conducted without regard to cutoff and solely to confirm or disaffirm the presence of methamphetamine using gas chromatography/mass spectrometry (GC/MS). Respondent's third sample tested positive for methamphetamine at a level of 34 ng/10 mg (Tr. 329-30; Ex. 9, Quest data package).

Defenses

Respondent posited several defenses to the charges of the possession and ingestion of methamphetamine. First, Respondent argued that his assignment to the Warrant Section put him in situations where the likelihood of passive exposure was increased, particularly because he worked in plainclothes and wore shorts year round. He argued that hair testing cannot reliably distinguish such contamination from intentional ingestion. Second, Respondent argued that Psychemedics did not follow their own wash procedures when testing Respondent's samples. Third, Respondent argued that parts of the chain of custody documentation for his samples were deficient. Fourth, Respondent argued that an over-the-counter nasal decongestant containing *l*-methamphetamine could have caused his positive test results, and that the Psychemedics procedure for distinguishing between *l*- and *d*-methamphetamine is unreliable. Fifth, Respondent asserted that drug use was inconsistent with his character, his work ethic, and his performance in the Department.

Sixth, Respondent argued that his due process rights were violated when the Department served him with charges and specifications in this case because Ciuffo did not first independently rule out all alternative reasons for why Respondent's sample tested positive for methamphetamine. Furthermore, Respondent had been suspended for approximately ten months when Ciuffo ordered the additional *d-l*- isomer analysis of his samples. As a result, Respondent argued, Ciuffo failed to make an independent and impartial determination, relying only on Psychemedics' "harmony method" to conclude the presence of *d*-methamphetamine.

Passive Contamination of the Hair

RESPONDENT testified that he worked approximately 50 hours per week in his assignment as a detective in the Warrant Section, with 35 of those hours spent executing warrants. Due to the nature of the work, Respondent testified, he and his team tended to have a significant amount of skin-on-skin contact with fugitives trying to flee. It was not uncommon for fugitives either to have drugs on their person or have drugs around them when the warrant was executed. Following an apprehension, a fugitive was searched extensively, including all pockets, waistband, and socks to check for weapons or contraband, amounting to "significant physical contact" with arrestees. Respondent testified that he typically wore shorts instead of pants while on duty. He felt it was more comfortable and better allowed him to run after suspects. It also made him look tougher to suspects, as if to put out an image that he was so tough he would wear shorts no matter how cold it was. In fact, according to Respondent, he was given multiple nicknames by his co-workers because he always wore shorts. Respondent also asserted that his small stature and slim build made it more likely that external exposure would cause him to test above the cutoff of 5 ng/10 mg (Tr. 516, 524-26, 528-31, 555-57; Respt. Exs. H1-3, photos of Respt. on duty, wearing shorts).

Respondent testified that he learned in his training from the Organized Crime Control Bureau that if members of the service believe they have ingested or been exposed to an illicit drug, they must obtain an exposure number and be guided by the Medical Division regarding procedures. Respondent admitted that he never had obtained an exposure number because he never had been in a situation where he believed he had ingested an illicit substance (Tr. 533-34, 546).

Cairns testified that Psychemedics ensured against external contaminants by an aggressive wash procedure that removed any drug on the outside of the hair structure but not trapped via ingestion through the bloodstream. The wash procedure does not, however, absolutely and always remove all external contaminants from a hair sample. The fifth wash is analyzed and multiplied by five as an additional safety criterion to ensure that ingestion is differentiated from contamination. The majority of samples, once washed and the fifth wash analyzed, contain no drug. However, when the fifth wash does still contain some amount of drug, that amount is multiplied by five to "mimic mathematically washing for five more hours." Cairns conceded that without an "effective decontamination procedure," methamphetamine found on the outside of a hair sample would be recorded by the tests as trapped within the hair (Tr. 313, 350-52, 406-07).

Respondent presented the testimony of **DR. DAVID KIDWELL**, a research chemist at the United States Naval Research Laboratory (NRL), part of the Department of the Navy. Kidwell holds a Bachelor of Science degree from the University of North Carolina at Greensboro and a Ph.D. from the Massachusetts Institute of Technology. He also completed two years of post-doctoral study at NRL. Kidwell acknowledged that he was being compensated for his testimony, but added that he had received NRL approval to testify in this proceeding as a private citizen and

not as a representative of the Navy or the Department of Defense (Tr. 592, 600, 603-06; Ex. L, Kidwell professional performance and development record).

Kidwell testified that he was one of the scientists who developed the hair testing protocols used in the field today, and specifically was tasked with developing the confirmation techniques for detecting drugs in hair. He testified, however, that he no longer conducts active research in the field of hair testing because "the science is relatively well established, the issues involved are well-known, and the problems are difficult to resolve." He has written approximately ten peer-reviewed articles on the topic of drug testing in hair. At trial, Kidwell was deemed an expert in the field of drug testing, including hair testing, the processes of drug testing, laboratory drug testing, and the analysis of drug test results (Tr. 594-95, 597, 601-02, 605).

Kidwell testified that contamination of hair is a "random event." Not only does the drug have to be present, but the hair has to be "receptive." Certain cosmetic products like lotions or oils increase the likelihood of contamination because they absorb and concentrate drugs from the environment. These products hydrate the hair, opening up the cuticle and allowing the drugs to penetrate over a long period of time. Sweat, in contrast, only allows penetration over a period of minutes while the hair remains wet. Because Respondent always wore shorts, his leg hair was more exposed and therefore more likely to become contaminated with drugs (Tr. 622, 644-45).

Kidwell testified that based on his expertise, hair testing cannot distinguish between intentional drug ingestion and unintentional drug exposure. In his opinion, Respondent was exposed to methamphetamine, either through ingestion or contact, and a distinction could not be drawn from the data provided. After evaluating numerous wash procedures while developing the hair testing process for the Navy, his findings indicated that no procedure could completely

eliminate environmental contamination. Kidwell conceded that Psychomedics' procedures were thought to be the best "at the time," but even then, they failed to distinguish between passive exposure and active use (Tr. 609, 611-12).

Kidwell testified that exposure through surface contact can cause a positive hair test with trace amounts of a drug, whereas a much larger amount of a drug that is ingested may still result in a negative hair test. For example, one milligram of a drug, evenly distributed by surface contact, could contaminate one hundred people at a level that would appear above the administrative cutoff and mirror the use of a routine user, whereas 50 milligrams of the same drug ingested by an individual would produce a negative hair test (Tr. 618-20).

Kidwell added that something like hair dye, which has a similar molecular weight and structure to drugs of abuse, diffuses into the hair when hydrated, and remains for the life of the hair. An increase in the time or concentration that the hair is exposed in a hydrated environment will cause the dye molecules to travel throughout the hair shaft and cortex. The action of hair dye thus demonstrated there were no areas of the hair shaft inaccessible to the external environment (Tr. 620-21).

According to Kidwell, depending on how contamination occurred and for how long the contaminants remained on the hair, washing the hair may not remove external contaminants. The cosmetic treatment of an individual's hair is an important factor in passive exposure, and may make the person more vulnerable. Hair in which the cuticle has been damaged, either by the use of certain hair treatments or combing it while wet, exposes the cortex of the hair, allowing for contamination to occur more easily (Tr. 621-22; Ex. M, Kidwell PowerPoint slides).

Conversely, Cairns testified that because one of Respondent's samples tested positive for methamphetamine at six times the cutoff, he would have had to have been exposed to a "massive

amount” of methamphetamine that was not subsequently removed during the wash procedure. Cairns estimated that Respondent ingested between 200 to 400 mg per month, depending on the quality of methamphetamine. He asserted that, based on the test results, it was “absolutely not” possible that Respondent ingested methamphetamine one or two times (Tr. 402, 404-05).

Cairns also testified that the wash procedure employed by Psychemedics had been validated by the Federal Bureau of Investigation subsequent to the 2009 publishing of the FBI’s concerns regarding the ability of the tests to distinguish between intentional ingestion and exposure in the *Journal of Analytical Toxicology* (Tr. 314; Resp. Ex. N, letter to the editor). The 2013 Massachusetts Civil Service Commission decision cited by Respondent was based, in part, on the FBI’s concerns and discontinuance of the test. To resolve the issue, Psychemedics “invited” the FBI to send its chemists to the Psychemedics laboratory, and they “learned how to decontaminate samples.” The FBI scientists then returned to their own lab and conducted their own study of the wash procedure (Tr. 387). Their findings were published in an August 2014 peer-reviewed study that determined the wash procedures employed by Psychemedics were sufficient to avoid false positives. See Cynthia L. Morris-Kukoski et al., *Analysis of Extensively Washed Hair from Cocaine Users and Drug Chemists to Establish New Reporting Criteria*, 38 *J. Anal. Toxicol.* 628 (Nov./Dec. 2014).

According to Kidwell, Psychemedics substantially deviated from their own wash process when testing Respondent’s sample, using an unpublished and inferior washing process. Kidwell explained that a solution made mostly of water should be used to expand the hair’s cuticle, allowing any drugs in the cortex to be extracted. Psychemedics’s use of ethanol at this stage could not open the cuticle (Tr. 620, 626, 628; Ex. 8, Psychemedics data package, pp. 15, 74).

To Kidwell's knowledge, the wash procedure used on Respondent's sample never had been published. He noted, however, that the Substance Abuse and Mental Health Services Administration (SAMHSA) guidelines did not cover the specifics of wash procedures because each laboratory was required to develop and defend their own procedures. The wash procedure used in the FBI study was not the wash procedure used in Respondent's hair tests (Tr. 627, 732-34).

Kidwell testified that Respondent could have been contaminated with methamphetamine by touching someone under the influence or recently under the influence of methamphetamine. Respondent's test results, ranging from 15 ng/10 mg, to 30 ng/10 mg, are "not a very high result" (Tr. 629-30).

On August 8, 2017, the Court requested that additional testimony from both expert witnesses be heard regarding Psychemedics's use of ethanol on Respondent's hair sample in the washing stage, as well as the relationship between presumptive positives for amphetamine during enzyme immunoassay and the coarse or damaged hair discussed in the study cited in Cairns's prior testimony. Furthermore, the Court asked for additional testimony on how Psychemedics ensures that drugs actually ingested remain in the hair after the wash procedure, if the wash is, in fact, so aggressive.

Based on this additional expert testimony provided by both Cairns and Kidwell, the Court finds that the wash procedure used on Respondent's sample was adequate to distinguish between methamphetamine contamination and use.

In contrast to Kidwell's assertion that Psychemedics deviated from their FDA-cleared wash process when testing Respondent's sample by using an inferior washing process, Cairns explained that after a sample is identified as presumptive positive, the subsequent analysis is not

subject to the jurisdiction of any federal agency. Cairns clarified that Psychemedics receives FDA clearance for its EIA instrumentation, not its wash procedures. However, in its application for EIA clearance, beginning in 2013 Psychemedics "communicated" that the wash procedure for amphetamines would involve ethanol, rather than the aqueous buffer used for other drugs of abuse. Cairns noted further that, Psychemedics is licensed by New York State and therefore subject to oversight, which includes an examination of the wash procedures used as well as its mass spectrometry (Tr. 785-86, 789).

Cairns explained further that due to, among other factors, methamphetamine's unique molecular structure, Psychemedics instituted an alternate wash procedure for amphetamine testing beginning in 2013. Concurrently, Psychemedics also changed its immunoassay process from radioimmunoassay to enzyme immunoassay to remove the requirement and expense of disposal of radioactive materials. As a result, the 2010 positive methamphetamine drug test of another NYPD officer cited to by Respondent used an aqueous buffer wash, rather than the wash used on Respondent's sample. It was not until three years later that Psychemedics changed to the ethanol wash for amphetamine presumptive positives (Tr. 786, 789, 793, 860-61; Ex. O, 2010 data package).

According to Cairns, an alternate wash procedure for amphetamine testing was needed because prior to the change, Psychemedics had a number of cases in which the wash data indicated that the wash had "failed." There was such a high amount of drug in the wash that it could not have been only environmental contamination. As a result, they developed an alternative wash procedure that was equally as effective as the aqueous wash, but "was sensitive to the issue of contamination and identifying contamination." This alternative wash procedure was verified in a peer-reviewed article, "Amphetamines in Washed Hair of Demonstrated Users

and Workplace Subjects” in Forensic Science International, as equally effective as the aqueous wash (Tr. 627, 788, 809-10, 860-61).

Cairns testified that when using the ethanol wash on amphetamine presumptive positive samples, the chances of the test returning a false positive due to contamination are zero (Tr. 792).

With respect to Respondent’s samples, Cairns testified that subsequent to the entire wash procedure performed on Respondent’s hair, including the criterion applied thereafter to mimic additional washes, Respondent’s hair samples tested positive for methamphetamine at 0.4 ng/10 mg and 0.3 ng/10 mg. The succeeding positive results of mass spectrometry yielded levels at 27.9 ng/10 mg and 15.1 ng/10 mg. This stark contrast in methamphetamine concentration indicates that the methamphetamine “has been embedded, incorporated, or trapped in the hair structure” as the result of ingestion. (Tr. 798, 800).

Cairns also acknowledged that though the isopropanol “prewash” is “part and parcel of the wash procedure” and is “always there,” Respondent’s sample was not prewashed with isopropanol. He testified that the isopropanol prewash was unnecessary in Respondent’s case because ethanol was used as the main solvent and as a result, “the ethanol would do the same removal” as would isopropanol, as both were alcohols (Tr. 828, 830-31).

On cross examination, Cairns admitted and corrected a mistake in the Psychomedics 510(k) Summary submitted to the FDA on May 2, 2013 (Ex. I). The document uses the “less than” mathematical symbol, $<$, to state that if, after the application of the wash criterion, the last wash value is less than 3.0, it is interpreted as possibly the result of external contamination. Cairns admitted the document should state that, if after the application of the wash criterion, the last wash value is greater than 3.0, i.e., > 3.0 , it is interpreted as possibly the result of external contamination (Tr. 855-56).

Kidwell originally had testified that Respondent could have been contaminated with methamphetamine by touching someone under the influence or recently under the influence of methamphetamine. In response, Cairns acknowledged that there is a general consensus in the scientific community that drugs can enter the hair through external contamination. He explained, however, that ingested drugs “tend to make it into the microfibrils and macrofibrils of the hair,” which are “areas that are not readily accessible to take the drug out of it,” effectively trapping it in the hair. The basis for the assertion that ingested drugs are trapped in the hair relies on the fact that a hair sample can be washed many times, each time decreasing the concentration of drug present. But at some point, a plateau is reached in which no drug more comes out no matter how many washes are performed. Yet there still is a large amount in the internal structure of the hair. This is therefore attributed to ingestion via the hair follicle as opposed to contamination from outside sources (Tr. 629, 925, 927).

In his September 2017 testimony, Kidwell reiterated his opinion that there is no way to distinguish between contamination and ingestion after a sample has gone through the washing process employed by Psychomedics. Kidwell asserted that the process by which drugs get into hair is “simple diffusion; that is, you take a high concentration and it diffuses – it goes in rapidly, and because you have a lower concentration once you end up in the hair . . . it diffuses out slowly.” Furthermore, Kidwell testified that he had studied the supposedly inaccessible regions of the hair structure and determined that “even on the microscopic scale,” there were no “regions inaccessible from the external environment.” Accordingly, Kidwell disagreed with Cairns that the microfibrils of the hair are impenetrable and stated “[t]o the best of my knowledge” any and all regions of the hair are porous (Tr. 951, 953-54).

First, it should be noted that hair testing has been held reliable by New York State courts. See Matter of Brinson v. Safir, 255 A.D.2d 247 (1st Dept. 1998). Thus, Respondent bears a

heavy burden of demonstrating Kidwell's assertion that hair testing is inadequate to reliably conclude an officer illicitly used drugs.

Second, Respondent's theory of external contamination is by its nature speculative. Although he testified that the Warrants Section interacted often with drug suspects, there was no testimony Respondent made a methamphetamine arrest, made an arrest involving a suspect or other individuals associated with methamphetamine, or ever was around methamphetamine at all. He never stated that he used lotion on his legs or indicated that he did not bathe on a daily basis. Kidwell admitted that normal hygiene reduces contaminants on the hair (Tr. 670).

Though Kidwell opined that the wash procedure used on Respondent's hair samples was inadequate, he failed to support those opinions with the same level of scientific corroboration as Cairns did. On the other hand, Cairns was able to provide concrete answers to the questions raised by this Court. Ultimately, Cairns's explanations of his confidence in Psychemedics's ability to distinguish between ingestion and contamination were more credible than Kidwell's assertions that the science was unproven.

The discrepancies Respondent points to were adequately explained by Cairns. Cairns credibly explained why Psychemedics developed an ethanol wash procedure for amphetamine presumptive positives. This was due to the molecular structure of the compound. The standard aqueous wash was removing so much drug that it could not have been due to contamination. Cairns also identified and named a peer-reviewed clinical study that validated Psychemedics's alternative ethanol wash for presumptive amphetamine samples.

Cairns also credibly explained that no isopropanol prewash was necessary in Respondent's case because ethanol, another alcohol, was being used and accomplished the same thing. Kidwell claimed that he was told by Dr. Werner Baumgartner, the founder of

Psychemedics, that a dry isopropanol prewash, as opposed to the 90% ethanol and 10% water used in Respondent's matter, was "absolutely" required. Kidwell identified no documentary evidence to support this multi-layer hearsay and the Court rejects it (Tr. 886-87, 958, 963-64).

The Court does not find that typographical errors, such as the less-than symbol used instead of greater-than, were a sign that Psychemedics's wash procedures cannot be trusted. The intended meaning could not have been misunderstood in that the statement would have been rendered nonsensical if "less than" was actually intended. See Matter of Debbony Octavia M., 277 A.D.2d 160, 161 (1st Dept. 2000) (typographical error on petition to terminate parental rights, indicating date significantly prior to child's birth for when she came into care of social services agency, was not a jurisdictional defect, in that parent was well aware of the error and informed of correct date prior to hearing).

In sum, the Court rejects Respondent's contentions about the legitimacy of the hair testing process. See Case No. 2013-9490, p. 18 (June 16, 2015) (other jurisdictions' doubting Psychemedics results in light of possible environmental contamination were not dispositive before this tribunal; testimony addressed all concerns about science of hair testing, and officer was unable to prove environmental contamination caused positive test results), confirmed sub nom. Matter of Lumezi v. Bratton, 147 A.D.3d 566 (1st Dept. 2017) (determination that officer ingested cocaine was supported by substantial evidence, including that hair was subjected to repeated testing by independent laboratories and yielded positive results for presence of cocaine).

False Positive: Pseudoephedrine/Nasal Spray

Respondent testified that he took both prescription and over-the-counter medications to treat sinus conditions. Following the notification that he tested positive, Respondent provided Ciuffo with a list of prescription medications that were filled since 2014. At trial, a generic

drugstore brand of nasal decongestant vapor inhaler containing what was labelled "Levmethamphetamine" (i.e., levmetamfetamine) was entered into evidence (Tr. 532; Ex. 6, MRO packet § 3-2; Ex. E, nasal inhaler).

EDDIE MERAZ, a nurse practitioner, testified that approximately five years ago, Respondent became a patient at the doctor's office at which Meraz worked. Respondent had received care from Meraz continuously for those five years. Meraz holds a bachelor's degree from Gonzaga University and a master's degree in science and nursing from Yale University. Meraz conceded that he does not have training or certification in forensic toxicology (Tr. 462-63, 475).

Meraz testified that Respondent had [REDACTED] and [REDACTED], resulting in referrals to an [REDACTED] for further evaluation. Meraz recalled that both he and an [REDACTED] prescribed Respondent [REDACTED] regularly. Meraz acknowledged that on May 10, 2016, he wrote a letter on Respondent's behalf after Respondent informed him that he had been suspended from the Department for testing positive for methamphetamine (Tr. 464-66; Ex. 6, § 3-1).

As a nurse practitioner, Meraz received training in the signs of drug addiction, and while he does not treat drug addiction per se, he is familiar with the behaviors someone under the influence of methamphetamine would exhibit, such as a feeling of euphoria, enthusiasm, increased heart rate, and increased blood pressure. Additionally, Meraz noted that as the methamphetamine wears off, individuals may exhibit signs of anxiety, distractibility, insomnia, irritability or paranoia. In contrast, during the five years Meraz treated Respondent, there were no indications that Respondent was using methamphetamine. In Meraz's opinion, Respondent's health was not consistent with methamphetamine use (Tr. 467-71).

Cairns explained that amphetamines are a general group of compounds, including methamphetamine, which is an analog of amphetamine. Methamphetamine molecules have an asymmetric center and two stereoisomers, *d*-methamphetamine and *l*-methamphetamine. *d*-methamphetamine is a stimulant and therefore a controlled substance. *l*-methamphetamine is a decongestant, generally available over the counter (Tr. 323-24).

Kidwell stated that certain over-the-counter medications contain "methamphetamine-like materials" such as the nasal inhaler (Ex. E), making it possible that the over-the-counter *l*-methamphetamine could be confused with the illicit *d*-methamphetamine (Tr. 647).

Cairns conceded that an excess amount of *l*-methamphetamine does have the ability to trigger a positive result in the initial screening immunoassay test. At the mass spectrometry stage, however, Psychemedics used what Cairns termed a "harmony method" to determine whether it was *d*- or *l*- or a mixture of both. For example, if the immunoassay came back with a result of 40 ng, that level should decrease at the mass spectrometry stage after washing because there is always some contamination from the environment. Here, it was 27.9 ng, a "harmonious" result from which Cairns could determine, as an expert conclusion based on his experience and credentials as a forensic toxicologist, was due to *d*-methamphetamine. If *l*-methamphetamine had been responsible, the level should have been approximately 100 to 200 ng, because only such a large amount of *l*-methamphetamine could have triggered the positive immunoassay result (Tr. 325-26, 336-37, 376, 411-12).

Prior to Cairns' testimony, Kidwell had never heard of the harmony method to interpret hair analysis results. After reviewing Cairns' testimony regarding the method, it was Kidwell's opinion that such a method could not be used to distinguish *l*-methamphetamine from *d*-methamphetamine. Kidwell explained that the harmony method attempted to correlate a yes/no

qualitative immunoassay screening test with a quantitative MS test. The immunoassay test was "not designed to generate a number. It's just designed to say, is there potential for drug present in the hair above a certain level." In his expert opinion, Kidwell would not rely on the harmony method to interpret hair analysis results and was unaware of any other lab that relied on the harmony method to make a *d-l*- determination (Tr. 650-51, 653).

The fact remains, however, that Respondent's sample was confirmed to contain 100% *d*-methamphetamine when further tested with mass spectrometry to measure both the *d*- and *l*-methamphetamine isomers. Thus there is no doubt that Psychemedics' initial use of the "harmony method" to make the same determination was, in fact, sufficiently reliable in this instance.

As such, the Court rejects Respondent's claim that his positive test result was caused by his use of a nasal spray containing *l*-methamphetamine and medications containing

██████████ Even if Respondent had taken large amounts of ██████████ as explained by Cairns, he would not have tested positive for methamphetamine. Additionally, even if he had used the nasal spray containing *l*-methamphetamine multiple times a day for an extended period of time, he might have only tested close to the cutoff level of 5 ng, on the immunoassay test, "but it would take a lot of *l*-meth to trigger the cutoff." During the next stage of analysis, the sample would have been identified as *l*-methamphetamine and reported as negative (Tr. 336-38).

Furthermore, the Court rejects the defense argument that Ciuffo was unsure Respondent's samples contained *d*-methamphetamine and this was why he requested the additional *d-l*- isomer analysis of Respondent's hair sample. Ciuffo credibly testified that he anticipated the *d-l*- levels would be an issue at trial, and wanted to be able to state without any doubt that Respondent's test results were not the result of *l*-methamphetamine.

Chain of Custody Issues

Kidwell also noticed that the signatures on page 8 of the Psychemedics data package appeared to be identical by individual and generated by computer. He acknowledged that there could be a legitimate reason to use computer-generated signatures in a lab, but insisted he never had seen a data package use one before, as they all had handwritten signatures (Tr. 631, 685, 725).

Kidwell also testified that the accessioning process of Respondent's samples, a critical step in ensuring that the correct sample was being tested and no cross-contamination occurred, was done extremely rapidly. It appeared that the lab workers were measuring out hair samples to place in vials at a rate of one vial per minute. This seemed implausible to Kidwell, as the process involved placing individual hairs into the vial (Tr. 632-33).

Kidwell noted that in one Psychemedics test of Respondent's samples, a barcode was read incorrectly, necessitating that the sample be re-run. According to Kidwell, there was supposed to be a "memorandum for the record" by the lab, detailing the issue and how it was corrected. There was no such memo here (Tr. 634-35).

According to Kidwell, the *d-l*-MS analysis conducted by Psychemedics and the accompanying report was missing chain of custody information. Namely, the chain of custody related to the extraction and injection of the drug during MS. At this stage, the chemist needed to "extract the drug from the digest, you then derivatize the drug and either re-extract the derivatized drug or concentrate it down and reconstitute it and" inject it into the machine. Those steps were missing in Psychemedics' chain of custody information (Tr. 637, 732; Ex. C, *d-l*-differentiation analysis data package).

The Court rejects Respondent's claims that any anomalies in the chain of custody or associated documentation require rejection of the Psychomedics results. Respondent has failed to explain why these supposed deviations invalidate the results, as was his burden. See Matter of Fergerson v. City of N.Y., 289 A.D.2d 41 (1st Dept. 2001).

There was no testimony to counter the key part of Cairns's testimony, that the chain of custody arrived at Psychomedics intact, and thus contained Respondent's samples. See Matter of Fischer v. Town of Patterson, 149 A.D.3d 1071, 1072 (2d Dept. 2017) (record contained evidence demonstrating identity of urine sample and its contents based on documented chain of custody); *Case No. 83905/08*, p. 18 (Feb. 4, 2009). The fact that the Psychomedics chemists might have placed hairs into vials more quickly than Kidwell would expect did not alter the samples themselves. Moreover, Kidwell apparently was unaware that a computerized or electronic signature program is a perfectly legitimate method of memorializing a signature. It is a method used by this Department to invoice and track property (see Property and Evidence Tracking System [PETS]).

The Court also notes that Psychomedics acknowledged the mistake in one part of the analysis when a barcode was read incorrectly. Kidwell admitted that the lab "presumably corrected" the error by re-running the sample (Tr. 634). Cf. Case Nos. 70714 & -729/96, pp. 39-40 (Jan. 16, 1997) (rejecting claim that mix-up of aliquots could have caused positive result, noting that chemist detected the problem on the basis of the data and re-ran the test, yielding positive result for cocaine), confirmed sub nom. Matter of Brinson, 255 A.D.2d at 247 (record supported finding that neither mistranscription of subject ID number nor improper placement of test tubes in centrifuge affected accuracy of test results).

Finally, Kidwell failed to explain why the steps allegedly missing in the *d-ll-* analysis invalidate the result, or why those steps, as opposed to just the injection of the drug into the machine, had to be memorialized in the chain of custody.

As such, the Court finds that any chain of custody issues were not fatal to the Department's case. See Matter of Allen v. Police Dept., 240 A.D.2d 229, 230 (1st Dept. 1997) (trial commissioner rationally credited testimony concerning mistake in transcription of numbers for urine samples); Matter of Bonilla v. Kelly, 213 A.D.2d 264, 265 (1st Dept. 1995) (within commissioner's province to accept or reject evidence allegedly casting doubt on accuracy of tests, including purported deficiencies in chain of custody).

Character Witnesses

Respondent testified that when he was notified he tested positive for methamphetamine, his "heart sunk to my feet" in shock. Respondent testified that he had a "zero tolerance" attitude toward drugs and believed that officers who use illicit drugs should not remain on the force because they posed a danger to themselves, their community, and their fellow officers (Tr. 538-40).

When asked what termination from the Department would mean to him, Respondent stated that "it would mean an end to my law enforcement career. . . . [E]verything I based my life around, whether it be family, discipline, education, everything focuses in on the Police Department. It's what I've always wanted to do" (Tr. 539).

Respondent submitted an assortment of letters, commendations, and recognitions received throughout his career (Ex. G, letters). In addition, Respondent presented the testimony of three fellow uniformed members of service with whom he had worked closely:

SERGEANT DAMION BROWN testified that as a supervisor in the Manhattan Warrant Squad (MWS), he is responsible for overseeing between eight to nine subordinates' investigations of warrants and I-Cards, as well as assisting in the field with apprehension efforts (Tr. 432).

Brown testified that he was Respondent's supervisor in MWS beginning in December 2015 and interacted with him on a daily basis. He described Respondent as "very organized, always on time. . . . [A]lways ready to go, knew what he was doing. . . . [N]eeded very little supervision. . . . He knew what had to get done and had done it properly." Brown went on to say that Respondent "was always meticulous about his work" and had a great reputation within the Department (Tr. 434-35).

Brown testified that because of the close working relationship within the squad, if Respondent had been using drugs, Brown should have noticed signs of drug use. He never observed Respondent under the influence of drugs or exhibit any of the behaviors or physical effects of methamphetamine use. Brown never discussed using drugs with Respondent nor had Respondent disclosed that he used drugs. In fact, Brown was "in shock" when Respondent's drug test came back as positive (Tr. 437, 440).

Additionally, Brown testified that Respondent always wore shorts to work, even in winter, and the unit worked in plainclothes. Brown stated that while executing warrants, Respondent often was in environments where drugs or drug users were present (Tr. 437-39, 448).

Brown acknowledged that he never socialized with Respondent outside of work, or observed Respondent taking any medications or using an inhaler (Tr. 445-46).

Brown agreed that when a member of the service believes he has been exposed to a narcotic, it is incumbent on the member to notify the Department. According to Brown,

Respondent never reported an exposure to methamphetamine or any other drug during the time Brown supervised him in the Warrant Section (Tr. 447, 450).

Brown conceded that he was not aware of the signs or symptoms of methamphetamine use and had no medical training. He had seen individuals using methamphetamine in documentaries but had not witnessed it in person. He nevertheless maintained that although he was not personally able to discern the effects of methamphetamine from another drug, he could determine when an individual was intoxicated on drugs in general (Tr. 447, 450, 452).

DETECTIVE DANIEL SILVERIO testified that Respondent had been his partner in MWS. Silverio testified that a large portion of the individuals they were looking for had some association with drugs or were wanted because of a drug-related offense (Tr. 561-62).

Silverio described Respondent as a "good guy" who was focused, meticulous, disciplined, responsible, and consistent. On an average week, Silverio estimated that he and Respondent spent more than 50 hours together (Tr. 565-67).

Silverio noted that one time, when he had been assigned to a patrol precinct, a co-worker was convicted of abusing drugs and stealing firearms. In retrospect, Silverio testified, neither he nor anybody else in the precinct was surprised because the co-worker's behavior was erratic, he often was late to work, inconsistent in his performance, and appeared disheveled. As a result of that experience, Silverio became more aware of drug use in the Department and it significantly impacted his choosing of partners (Tr. 570).

Silverio and Respondent studied together for the sergeant's exam. He never saw Respondent use drugs or suspected him of being under the influence of drugs. Silverio agreed that Respondent had a "zero-tolerance" attitude toward drug use and spoke openly against drugs (Tr. 572-73).

Silverio acknowledged that he was, on more than five occasions, involved in a struggle alongside Respondent with a suspect. Silverio never tested positive for any drugs, although he was not drug-tested from November 2015 to April 2016, the period stated in the specifications against Respondent. Silverio arrived at the Warrant Section in approximately September 2015 (Tr. 559-60, 579-80).

DETECTIVE BRIAN DOWNEY is assigned to the Police Commissioner's Liaison Unit and also serves as the president of the Gay Officers Action League. Downey met Respondent through GOAL and described him as "an exemplary member" of both the fraternal organization and the Department. He noted that Respondent established himself as someone that can always be counted on (Tr. 487-90).

Downey testified that he was "shocked" when he learned that Respondent had tested positive for methamphetamine and never suspected that Respondent used drugs. He never observed Respondent exhibit behavior consistent with methamphetamine use (Tr. 491-92).

As members of GOAL, Downey and Respondent traveled together to represent the organization in other locations, and twice shared a hotel room during such trips. During the trips, Downey spent a majority of his time with Respondent and also socialized with Respondent. Downey asserted that if Respondent had been using methamphetamine on a weekly or bi-weekly basis, he would have noticed. Downey also testified that he observed Respondent use an inhaler for allergy symptoms while on a trip together. He acknowledged that he would be not be able to determine if an individual was taking a prescribed stimulant, such as Ritalin (Tr. 493-95, 497-98).

This tribunal has noted that it is impossible to truly know what a colleague does in his free time outside of work. See *Case No. 2014-11288*, p. 12 (Mar. 21, 2016); *Case No. 2014-*

12161, p. 13 (July 30, 2015). Though Respondent was respected by his peers and supervisors for his exceptional work, he was not accused here of being a daily user of methamphetamine. Cairns testified that Respondent's test results indicated he was most likely a "weekend" user of methamphetamine, i.e., he did so on his days off from work (Tr. 403). It therefore is entirely plausible that Respondent's methamphetamine use was limited to those times when he was off duty.

Due Process

Respondent argued that his due process rights were violated because Ciuffo failed to make an independent and impartial determination as the Medical Review Officer interpreting Respondent's test results. Allegedly as a result of Ciuffo's partiality and complete reliance on Psychomedics' "harmony method," Respondent was served with charges and specifications on June 2, 2016, and suspended for ten months before a confirmatory test was even ordered (Ex. A, preference of charges and specifications).

Ciuffo stated that the role of Medical Review Officer was created by the U.S. Department of Transportation. A MRO must be a licensed physician knowledgeable in the area of workplace drug testing and receiving results, and acts as an independent reviewer of test results to explore legitimate alternative medical explanations for positive drug tests. Ciuffo is the sole MRO for the Police Department (Tr. 92-99, 119, 162; Ex. 7, Ciuffo C.V.).

Ciuffo admitted that the NYPD does not specifically follow the USDOT's best practices. He also acknowledged that the NYPD has no written procedure with regard to the role of MRO or the protocol involved in confirming a positive drug test result (Tr. 125, 132; Ex. B, Code of Federal Regulations excerpts).

Ciuffo testified that during his review of the results, he did not review the entire data package sent by Psychemedics, as it was not his practice to do so. Rather, he examined the single-page result as well as the chain of custody forms and the drug screening questionnaire filled out by Respondent prior to the sample collection. Ciuffo further acknowledged that as the MRO, he was not aware of Psychemedics's quality assurance procedure, but maintained that everything he needed to ensure the validity of the results was provided to him. He acknowledged that this was the first time in his experience with the Department that he ordered the additional isomer analysis (Tr. 139, 142, 146-47, 162, 230; Ex. 6, MRO packet).

Ciuffo testified that if he had determined that Respondent's positive drug test was the result of a legitimate medical reason, he would have reported it as negative, as he had done many times during his tenure with the Department. In fact, Ciuffo testified that 85 to 90 of the positive drug test results that occur throughout a one-year period, on average, were deemed negative due to prescription drug use. In terms of reviewing the requisite chain of custody forms, Ciuffo stated that he compares the two copies of the forms to make sure the results correspond to the sample and there are no errors. Ciuffo noted that Psychemedics did not send a positive drug test result unless it tested positive above the cutoff level for *d*-methamphetamine. Ciuffo agreed that he depended on the test results provided to him by Psychemedics during the course of his review (Tr. 171-72, 202-05, 207, 229).

On May 13, 2016, Ciuffo spoke to Psychemedics laboratory director Michael Schaffer and requested that he review the data from Respondent's test. On May 16, 2016, Ciuffo again spoke to Schaffer regarding Respondent's results. They discussed the various medications Respondent had taken, and confirmed that methamphetamine was present in both samples and there was no cross-reactivity with those "prescription drugs" Respondent was taking. Ciuffo described his conversations with Schaffer as merely an "extra step of asking the toxicologist if

there was any possibility at all that any of the multiple medications that the individual had given to me could have made this test sample positive" (Tr. 258-60).

The Court finds that ordering the additional isomer analysis of Respondent's sample ten days before this trial commenced was appropriate in an effort to put forth the most scientifically sound evidence possible. The fact that it happened after the specifications were preferred is not a due process violation. Respondent's due process rights therefore were not violated during the ten-month period following the drug test but prior to the *d-/l-* isomer analysis.

The Court further finds that there was no violation of Respondent's rights by the nature of how Ciuffo conducted his review. The Code of Federal Regulations provides a framework for MROs that review individuals subject to USDOT control, like commercial truck drivers. Respondent proffered no reason that the NYPD must adhere to the same guidelines. Cf. Matter of City of Ithaca v. Civil Serv. Employees Assn., 25 A.D.3d 859, 860-61 (3d Dept. 2006) (MRO was mandated by USDOT CFR to suspend driver upon finding that supposed inability to urinate for test was not a preexisting condition).

In any event, Respondent pointed to no purported violations of the regulations by Ciuffo that would implicate the integrity of the test. Cf. Pasternack v. Laboratory Corp. of Am. Holdings, 27 N.Y.3d 817, 825-27 (2016) (no duty of care for laboratory to adhere to aspects of federal regulations and guidelines that do not implicate the scientific integrity of the testing process).

Finally, the lack of a written standard operating procedure for MROs in the NYPD is not fatal to the Department's case. There was no evidence that Ciuffo deviated from his normal procedure in any prejudicial way, or that he took any action not specifically necessary to the facts of Respondent's case, like ordering the *d-/l-* isomer analysis.

Conclusion

In sum, the hearing before this tribunal was a de novo hearing on the merits of whether Respondent possessed and ingested methamphetamine. The Court has found no irregularities that would impact on its findings. As such, Respondent is found Guilty.

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 9, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Also submitted was a packet of commendations and character letters in support of Respondent (Ex. G).

Notwithstanding the attestations to Respondent's good character and excellent work history, the Department has a strong interest in not employing individuals who ingest and possess illegal drugs such as *d*-methamphetamine. Therefore, the Court recommends that Respondent be terminated from employment with the Department. See Case No. [REDACTED] [REDACTED] (nearly 13-year member with no prior disciplinary history dismissed from Department for possessing and ingesting cocaine); Case No. [REDACTED] (over 19-year member, no history, same result), confirmed sub nom. Matter of Jones v. Kelly, 111 A.D.3d 415 (1st Dept. 2013) (penalty not shocking to Appellate Division's sense of fairness, as Police Commissioner is responsible to the public for the Department's integrity).

APPROVED

FEB 16 2018
JAMES P. O'NEILL
POLICE COMMISSIONER

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER BRIAN QUIRE
TAX REGISTRY NO. 940601
DISCIPLINARY CASE NO. 2016-15832

Respondent was appointed to the Department on January 9, 2006. On his last three performance evaluations, Respondent twice received an overall rating of 4.0 "Highly Competent" and once received a 3.5 "Highly Competent/ Competent." He has been awarded three medals for Excellent Police Duty, three medals for Meritorious Police Duty, and one medal for Meritorious Police Duty – Integrity. [REDACTED]

Respondent has no prior disciplinary history.

David S. Weisel
Assistant Deputy Commissioner Trials